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**TESTIMONY ON FY 2022 PROPOSED BUDGET, H-6122, ARTICLE 15
RELATING TO HEALTHCARE REFORM
April 15, 2021**

Article 15 of the proposed FY 2022 budget would authorize Rhode Island to enter into various interstate licensure compacts for a number of healthcare-related professions. While the ACLU of RI has no objection to the overall goal of this Article, we would like to raise some concerns about the ways in which it may cede certain state authority to an interstate Commission and undermine RI law. We believe that there are provisions included in this proposal which are not sufficiently protective of the rights of Compact participants and licensees and which the State should be calling on the Commission to revise before joining.

- Although varied in their specific language and approach, each of the sections and each separate proposed compact have severe and extensive criminal record and background check requirements for applicants. Only one proposed compact – The Interstate Medical Licensure Compact – contains even the possibility for appeal “on the determination of eligibility for an applicant” [page 4, lines 22-23].

Otherwise, with each application for licensure requiring a criminal background check, and often with no explicit guidance as to what information within a background check could disqualify an applicant, each of the compacts contain fairly indiscriminate policies with no procedural safeguards. In contrast, just last session, the General Assembly passed a “fair chance licensing” law which sets clear limits on the use of criminal records to deny occupational licenses and provides an appeal process for individuals to show proof of rehabilitation and qualification aside from their criminal record. Not only is the concept of “fair chance licensing” ignored by the compact, but the extremely broad disqualification provisions could serve to deny licensure to otherwise eminently qualified and capable candidates – candidates who would be qualified under Rhode Island law – based on irrelevant and outdated offenses.

- Language to this effect appears in each compact in the following places:

- Page 3, lines 7-8: Language in this section, which is also in the Interstate Medical Licensure Compact Rules, provides for automatic disqualification of any person who has ever been convicted of any felony, any undefined

“crime of moral turpitude,” and any “gross misdemeanor,” also an undefined term.¹

- Page 24, lines 19-26: Requires a broad criminal background check that automatically disqualifies any person ever convicted or pleading to any felony offense at any time. Thus, to give one example, a nurse could be barred from obtaining an interstate compact license because she pled nolo contendere to a felony marijuana possession offense at the age of 18 – and when such an offense is likely to not even be a crime anymore in Rhode Island in a few months.
- Page 43, lines 25-26; page 45, line 17: This language, also appearing in the Compact rules, would grant the Commission unbridled discretion to determine what constitutes a disqualifying criminal record that would bar a psychologist from interstate practice under this compact.
- The same problem appears to hold true for physical therapy licenses [Pages 61-62, lines 32-32 and lines 1-2, 7-10] and EMT licenses [Page 77-78, lines 30-33, 1-2]
- In several places within this bill, the interstate compacts and commissions joined by Rhode Island would be exempted from the provisions of the state’s Open Meetings Act, Administrative Procedures Act, and Access to Public Records Act. While we recognize that this is likely due to the national nature of these commissions and compacts, the legislation should nonetheless make clear that these exemptions cannot be used to circumvent those laws. For example, a record that is public under APRA should not, and cannot, be made confidential merely because it is shared with the Commission.
 - Broad language in two sections regarding the confidentiality of investigations could be interpreted to preclude the State or the Commission from notifying complainants of the outcome of their complaints. These should be revised. [Page 6, lines 10-11; Pages 47-48, lines 33-34, 1]
 - Language within the sections suggests that the State could declare certain information submitted to the Compact database confidential notwithstanding any state law provisions which may require otherwise. Considering that language within this Article specifically exempts the interstate compacts from the provisions of the APRA, this requirement is particularly concerning. These provisions should make clear that a compact state may only designate as confidential information that is already exempt from disclosure under relevant state laws. [Page 48, lines 24-26; Page 70, lines 6-7; Page 86, lines 17-19]²

¹ We realize that, in various instances, licensees could still apply to other member states on an individual basis [see, e.g., Page 3, lines 21-23], but this still places these individuals in a much less advantageous position.

² In one section [Page 29, lines 7-10], this language is currently enacted law.

- Broad language in some sections authorizes the sharing of private information, without any protections, with law enforcement agencies. In order to protect privacy rights and avoid fishing expeditions, some type of “for cause” standard should be included before individualized information is turned over to law enforcement. [Page 33, lines 18-19; Page 52, lines 18-19; Page 66, line 18; Page 84, lines 14-15]
- Language in some sections provides for the adoption of “emergency” rules without public notice or input if it is necessary to “meet a deadline...established by federal law or rule.” Our concern with this language is that, as worded, nothing would prevent the Commission from creating the “emergency” itself by waiting too long to initiate rule-making proceedings in a timely manner so as to avoid the “emergency” timing in the first place. These exemptions should be clarified to avoid such runarounds. [Page 18, lines 6-7; Page 56, lines 20-21; Page 72, lines 2-3; Page 88, lines 18-19]

Thank you for your consideration of our views.